vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3083 OF 1998

Mahendra Kisan More ... Petitioner

V/s.

The Secretary & Ors. ... Respondents

Ms.Kumud A. Bhatia for Petitioner
Mr.R.S. Apte for Respondent Nos.1 & 2
Mr.S.K. Chinchalikar, AGP, for Respondent Nos.4 and 5

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 19, 2007**

ORAL JUDGMENT:

. The petitioner has challenged the order of the Deputy Director of Vocational Education, Respondent No.4 herein, who has granted approval to the appointment of Respondent No.3 to the post of lecturer in Electronics Technology. By the same order, the petitioner has been directed to be appointed as an Instructor.

2. The petitioner obtained the qualification of Diploma in Electronics and Telecommunications Engineering on 15.7.1993. He had the experience of 4 years of teaching when he applied for being appointed to the post of Lecturer pursuant to the advertisement issued by Respondent No.1 in a newspaper on 20.6.1993. It appears that Respondent No.3 also applied for the same post. He was qualified with a Diploma in

Instrumentation. The petitioner was appointed as an Instructor whereas the respondent was appointed as a lecturer. The petitioner continued as an instructor after his appointment in Respondent No.1 institution without demur. He was appointed as a permanent instructor on 6.2.1995 and his appointment was approved by Respondent No.4 herein. Respondent No.3 was appointed as lecturer. Initially the appointment of Respondent No.3 was not approved by Respondent No.4. However, on 6.2.1995, his appointment was also approved as a lecturer by Respondent NO.4.

3. It appears that the petitioner filed Writ Petition No.6126 of 1997 before this Court contending that Respondent No.3 who did not have the requisite qualifications he had been appointed to the post of lecturer. It was contended in the writ petition that though the petitioner was suitably qualified in accordance with the advertisement issued in the newspaper, he was not appointed as a lecturer. This Court by an order of 29.1.1998 permitted the petitioner to withdraw the writ petition with liberty to approach Respondent No.4. Accordingly, on 10.2.1998, the petitioner represented to Respondent NO.4 that the approval granted to the appointment of Respondent No.3 as a lecturer should be cancelled. It was pleaded that Respondent No.3 lacked the qualifications to be

appointed as a lecturer since he had only secured a diploma in instrumentation. The petitioner, therefore, pleaded that he should be appointed as a lecturer in Electronics Technology by cancelling the approval granted to the appointment of Respondent No.3.

3. Respondent No.4 rejected the application of the petitioner. Respondent No.4 came to the conclusion that the appointment of Respondent No.3 as a full time teacher (Electronics Technology) from 15 7.1993 was proper. This was because the Technical Education Board, Maharashtra, Mumbai had observed that the Diploma course in Instrumentation was oriented towards Electronics Instrumentation. This course was said to be common with the first and second year syllabus in other technical diploma courses. It was only some subjects which were common with other electronics diploma courses and some which were specifically used for instrumentation course. It was mentioned that the diploma course in instrumentation was based mainly on electronics as a subject. On this basis, the Deputy Director, Respondent No.4, granted approval to the appointment of Respondent No.3 as a lecturer. Respondent No.4 also considered the fact that the representation could not be granted since the petitioner had raised an objection after many years.

4. In my opinion, the petitioner has moved the

Court too late after the approval was granted to the appointment of Respondent No.3. In fact, the petitioner ought to have approached the proper forum to cancel the appointment of Respondent No.3 in the year 1993 itself when he knew that Respondent NO.3 had been appointed as a lecturer without the specific qualifications. However, the petitioner chose to remain silent from 1993 onwards. Even after the approval of the appointment of Respondent NO.3 to the post of lecturer, the petitioner did not care to approach any forum for redressal of his grievance immediately. It was only after two years that the petitioner thought it necessary to challenge the appointment of Respondent No.3. The Deputy Director has therefore rightly rejected the representation of the petitioner which has been made after such a great delay.

5. Apart from this, the institution has stated in its affidavit that the petitioner was not suitably qualified for the post of a lecturer when he applied as he did not have the requisite teaching experience i.e. three years experience with a diploma in electronic technology. The petitioner did not have this experience and therefore he could not have been appointed as a full time teacher. In any event, the Respondent NO.1 has also stated in his affidavit that the petitioner did not produce an experience certificate at the relevant time and, therefore, is not appointed as a lecturer.

6. The learned advocate for the respondent submits that it would not be proper to disturb the position today after so many years when the petitioner slept over his rights for almost four years after the respondent NO.3 was appointed. The learned advocate for the petitioner submits that an unqualified person should not be permitted to continue in the post. She places reliance on the judgment of the Supreme Court in the case of *Dr.Prit Singh v/s. S.K. Mangal & Ors.,* (**Civil Appeal Nos.3551 of 1992 decided on 2.9.1992)**. The Supreme Court in this case has held that where any qualification is to be required for being appointed on a particular post, it is necessary that the eligible candidate for that post must possess the qualifications required.

7. There is no doubt that that is the position in law. However, the aggrieved employee must approach the proper forum within a reasonable time. Four years can hardly be considered a reasonable time. Even after approval to the appointment of Respondent No.3 was granted, the petitioner approached this Court after two years. In such circumstances, it is not possible to accept the contentions on behalf of the petitioner. Petition is dismissed. Rule discharged. No costs.